

Divorce and Pension Benefits

If you are going through a divorce, the court is required to include the value of both parties' pension rights when valuing the matrimonial assets.

Options for dealing with pension rights on divorce

- To offset pension rights against other financial assets, such as the family home.
- To earmark part of a member's pension benefit for payment direct to the ex-spouse.
- To share the member's pension benefits with the ex-spouse at the time of the divorce. This option is only available for divorce proceedings which commenced on or after 1 December 2000.
- In addition, an ex-spouse receiving payments from the member may be nominated by the member as a beneficiary for a pension/lump sum on the member's death.

How do the options work?

Offsetting

- The value of the member's pension rights is set against any other financial assets. This will only work if there are other assets of a comparable size to the pension rights. Many divorcing couples prefer this method which leaves pension rights intact. However, it can be difficult to achieve a fair share of a couple's total assets by offsetting a pension pot against other assets. If it turns out to be difficult to achieve offsetting, one or other of the alternative is likely to be used.

Earmarking

- Earmarked pension benefits only become payable to the ex-spouse when the member's benefits are paid.
- Earmarked pension benefits cease when the member dies. If the ex-spouse dies first then the earmarked pension ceases and the full pension to the member continues.
- An earmarking order will cease if the ex-spouse re-marries, or if some other event specified in the Court order, such as co-habiting, occurs.
- Either party can apply to the Court, at a later date, if their financial circumstances have changed, to revise the earmarking order.
- The earmarking order cannot relate to any widow, widower's, children's or dependant's pension payable on the member's death.
- There is no limit on the amount that can be earmarked, except that the trustees are not liable to pay more than the benefit payable to the member.



- Earmarking has not always been proved entirely satisfactory, as it does not achieve a 'clean break' and does not enable the ex-spouse to receive retirement income until the spouse with the pension pot retires.

Pension Sharing

- The aim of pension sharing is to offer divorcing couples a clean break by allowing the pension rights to be shared at the time of the divorce. This also applies to pensioners.
- At the point of divorce, the ex-spouse will acquire a pension benefit in his or her own right.
- Pension sharing can only be used where the divorce is final. Unlike earmarking, it will not be available in cases of judicial separation.
- In England, Wales and Northern Ireland, all accrued pension rights up to the time of divorce may be shared. In Scotland, only those pension rights accrued during the marriage can be shared.
- 'Shareable rights' include both State Second Pension (S2P) and private pension rights. They will not include the Basic State Pension or widow's, widower's, children's and dependant's pensions already in payment.

Charges

- The divorcing couple will be required to meet the administration costs involved in pension sharing.
- The Pensions Trust must provide a statement of the charges before a pension sharing order is made. The current charge (excluding additional quotations) is set at a maximum of £1,700 usually collected by reducing benefits.
- If The Pensions Trust does not receive written directions to share costs between the divorcing couple, then the law requires the full cost to be borne by the member.

What should I do?

- You should write to your usual point of contact at The Pensions Trust requesting a divorce transfer value.
- We will then send you all the information you require which should be passed to the professional adviser who is dealing with your divorce.
- If you are unwilling or unable to reach an agreement on offsetting the pension rights against other assets, the Court will consider all relevant information, and decide whether an earmarking or pension sharing order is to be granted, and on what basis.